

# Intellectual Property (IP)

IP Lecture 1

MGT 388 Lecture 4



# What is Intellectual Property and why is it relevant to me?

- The products, results and rewards of human intellectual and commercial endeavour
- Types of IP:
  - Information (trade secrets)
  - Creative expression and design
  - Reputation
  - Invention
- Protection
  - Protect your own IP
  - Protect yourself from personal liability

# Relevant IP laws

- Information (Trade Secrecy)
  - **1. Confidential information**
- Creative expression and design
  - **2. Copyright**
- Reputation
  - **3. Registration of Trade Marks**
  - **4. Passing Off**
- Invention
  - **5. Patents**

# Remedies for infringement of IP law

违反知识产权法的补救措施

- Search orders (*Anton Pillar*) orders
- Injunctions
  - Final injunctions
  - Interlocutory injunctions (*American Cyanamid v Ethicon* [1975] AC 396)
  - Freezing orders (*Mareva* injunctions)
- Damages
- Account of profits
- Delivery up
- Destruction of the infringing items
- Limited criminal sanctions

# 1. Confidential Information

- The law will uphold a person's obligation to keep a secret
- Used to protect ideas and information – no need for these to have tangible form
- Information may be commercial, governmental, or personal
- Based on notion of good faith

# Three requirements for legal protection (*Coco v ANC Clark*)

- (i) Information must possess the necessary quality of confidence
  - Identifiable (as the claimant's idea) and certain – not vague or trivial
  - Not already in public domain – must be secret information
- (ii) Information must have been imparted in circumstances imposing obligation of confidentiality
  - Term in contract
  - Implied due to relationship
  - Implied due to circumstances
- e.g. employee – owes duty of fidelity to employer (but note level of seniority & skill level)
- e.g. past employee – trade secrets vs commercially sensitive information (*Faccenda Chicken Ltd v Fowler*)
  - Note: Restraint of trade clauses – must be reasonably necessary to protect trade secret or abuse of personal influence over customers to entice them away (*Faccenda Chicken Ltd v Fowler*)
- e.g. involuntary 3<sup>rd</sup> party recipient – depends on knowledge of recipient
- (iii) An unauthorised use of that information
  - Questionable whether detriment is required

# Defences to alleged breach of confidence

- Claimant gave consent for info to be disclosed
- Information already in public domain
- In the public interest for info to be disclosed

# Remedies for Breach of Confidentiality

- Interlocutory injunction
- Final injunction
- Damages



## 2. Copyright

- Seeks to protect the tangible expression of an idea NOT the idea itself
- Serves to protect ‘works’ of authorship (e.g. art, music, performance, literature, software, coding, films, radio and television broadcasts)
- Life plus 70 years (Copyright, Designs, and Patents Act 1988 (CDPA))
- Joint-authorship (s10) vs Co-authorship (s173)
- Justifications – (i) Utilitarian, (ii) Labour (natural law), (iii) Hegelian

# Requirements for copyright

- Automatically vests in the author of the work (no need to register)
- Requirements:
  - The work is original
  - The work is recorded in a material form (i.e. protects expression not idea)
  - A 'substantial part' of work is reproduced without permission
  - Author or work is connected to a signatory state of Berne Convention
- Author of work may transfer ownership of copyright (and rights thereof)

# Scope of protection

- Primary infringement (does not have to be for commercial purposes)
  - Restricted acts (i.e. only copyright owner permitted to do these)
    - s16(1)(a): to copy
    - s16(1)(b): to issue copies to the public
    - s16(1)(c): to perform, show, or play works in public
    - s16(1)(d): broadcast or include works in cable programme service
    - s16(1)(e): to adapt the work or to do any of the above in relation to an adaptation of the work
- Secondary infringement
  - Sections 22-26 (anyone who knowingly deals in infringing copies)
  - Must show knew/had reason to believe items were infringing copies

# Defences to breach of copyright

- **Defences**

- Deny claimant is owner (or licensee) of copyright work
- Deny work is entitled to copyright protection
- Deny any infringing conduct has been committed

- **If above shown then statutory defences (“fair dealing”) may apply:**

- s29: Non-commercial research and private study
- s30(1): criticism & review
- s30(2): news reporting
- s31: incidental inclusion
- ss32-36: educational uses
- ss37-43: libraries
- ss48-75: typefaces, timeshifting, rentals, clubs and societies etc.

# Criminal Offences

- Note: higher burden of proof required under criminal law than under civil law
- s107 (1) A person commits an offence who, without the licence of the copyright owner—
  - (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
  - (d) in the course of a business –
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) exhibits in public, or
    - (iv) distributes, or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- s107(2A) A person who infringes copyright in a work by communicating the work to the public
  - (a) in the course of a business, or
  - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright

# Moral Rights

“Independently of the author's economic rights, **and even after the transfer of the said rights**, the **author** shall have the right to claim authorship of the work and to **object to any distortion, mutilation or other modification of, or other derogatory action** in relation to, the said work, which would be **prejudicial to his honour or reputation.**” (Berne Convention Article 6 bis)

# Moral Rights cont.

- CPDA s77 - Right to be identified as author or director of work
- CPDA s80 - The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.
- CPDA s81 – Above moral rights do not apply to: a computer program; the design of a typeface; any computer-generated work.
- CPDA s84 – A person has the right not to have other works falsely attributed to him/her